

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

IN RE: NEW ENGLAND COMPOUNDING
PHARMACY, INC. PRODUCTS LIABILITY
LITIGATION

MDL No. 2419
Master Dkt. 1:13-md-02419-RWZ

THIS DOCUMENT RELATES TO:

All Actions

**PLAINTIFFS' STEERING COMMITTEE'S STATUS REPORT
ON CASES AGAINST REMAINING CLINIC DEFENDANTS**

In response to the Court's request at the April 14, 2016 status conference, the Plaintiffs' Steering Committee ("PSC") provides this status report to address litigation against clinics other than the Tennessee clinics, Premier, and Box Hill.

A. Procedural Background

1. Settled Cases

As the Court well knows, the claims against NECC and the national defendants (ARL, Liberty, Victory, UniFirst) have been resolved. That resolution resulted in judgment being entered in about 450 individual civil actions (*See* ECF No. 2450).¹ Claims against the clinics High Point, Inspira, and Insight have also been resolved.

2. Actively Litigated Clinic Cases

The cases against the Tennessee clinics (including St. Thomas, Specialty Surgery Center, and Howell Allen/St. Thomas Outpatient Neurosurgical) are being actively litigated, with the first bellwether trial set for August 2016. The cases against Premier and Box Hill are also being actively litigated, according to a separate pretrial schedule.

¹ We understand that the clerk is updating the docket for each action to reflect that dismissal has been entered.

3. Remaining Clinic Cases

This leaves cases against clinics other than the Tennessee clinics, Premier, and Box Hill (the “remaining clinic cases”). Discovery in these cases is currently stayed until June 1, 2016.

The PSC’s updated census shows the following case counts:

Clinic Defendant	Pending Cases
Advanced Pain & Anesthesia Consultants, PC	4
Cincinnati Pain Management Consultants, Inc.	4
OSMC Outpatient Surgery Center	3
Ambulatory Care Center, LLC	3
BKC Pain Specialists, LLC	2
Encino Outpatient Surgery Center	2
Ocean State Pain Management	2
Sunrise Hospital and Medical	1
Dallas Back Pain	1
Fullerton Orthopaedic Surgery Medical Group	1
Sequoia Surgery Center	1
Marion Pain Management Center, Inc.	1
MAPS	1
Wellspring Pain Solutions Clinic	1
Total	27

4. Dismissed Clinic Cases

The following cases appeared on the PSC's last census, but – the PSC has since learned – have been, or will be, dismissed. They are not included in the charts above or below.

	Case. No (D. Mass.)	Caption	Clinic Defendant	Status
1	1:13-cv-12658	<i>Cooper v. BKC Pain Specialists</i>	BKC Pain Specialists	Dismissed
2	1:14-cv-12323	<i>Stansbery v. NECC</i>	BKC Pain Specialists	Dismissed (Stipulation forthcoming)
3	1:14-cv-12376	<i>Townsend v. NECC</i>	BKC Pain Specialists	Dismissed (Stipulation forthcoming)
4	1:13-cv-12961	<i>Hulsey v. NECC</i>	Marion Pain Management Center	Dismissed
5	1:13-cv-10626	<i>York v. NECC</i>	Marion Pain Management Center	Dismissed
6	1:13-cv-10484	<i>Briggs v. NECC</i>	Neuromuscular & Rehabilitation	Dismissed
7	1:13-cv-10485	<i>Smoot et al v. NECC</i>	Neuromuscular & Rehabilitation	Dismissed
8	1:13-cv-12233	<i>Duff v. DBMJ Rehabilitation</i>	DBMJ Rehabilitation Services, PLLC	Dismissed
9	1:14-cv-10433	<i>Lewis v. NECC</i>	Nazareth Hospital	Dismissed
10	1:14-cv-13558	<i>Jackson v. Wellspring Pain</i>	Wellspring Pain Solutions Clinic	Dismissed
11	1:13-cv-12807	<i>Jenkins v. Ameridose</i>	Ambulatory Care Center, LLC	Dismissed
12	1:14-cv-10434	<i>King v. NECC</i>	Hahnemann University Hospital	Dismissed
13	1:13-cv-10479	<i>Ross v. NECC</i>	MAPS	Dismissed (Stipulation forthcoming)
14	1:14-cv-10361	<i>Sucharzewski v. Sunrise Hospital</i>	Sunrise Hospital and Medical	Dismissed

B. Efforts to Reach Plaintiffs' Counsel in all Remaining Clinic Cases

During the April 14, 2016 status conference, the Court asked the PSC for a recommendation as to how it should address the remaining cases in the MDL, including whether schedules should be set for additional groups of cases. The PSC undertook to reach out to plaintiffs' counsel in these cases to get their views.

On May 2, 2016, the PSC sent a letter, via email, to counsel for plaintiffs in the MDL. The letter advised that the PSC's view is that – unless the lawyers who brought the case feel otherwise – the most prudent course of action is to remand cases originally filed in state court and transfer cases filed in federal court back to their home district. The PSC asked that any attorney representing plaintiffs in a remaining clinic case who wished to continue to litigate his or her case in the MDL contact the PSC by Friday, May 13, 2016.

On May 4, 2016, out of an abundance of caution, the PSC separately provided notice of its May 2, 2016 letter in the MDL docket (ECF No. 2850).

By May 13, 2016, the PSC had heard from only a few plaintiffs' attorneys as to their preference for proceeding.

On May 14, 2016, given the small number of respondents, the PSC undertook to re-review the universe of remaining cases to determine whether any had been dismissed. This review determined that a number had been dismissed and those dismissals had not been captured by the PSC's earlier census reports.

On May 16 through 18, the PSC called the plaintiffs' attorneys of record in each case against the remaining clinics in order to get their views about how they wished to proceed.

C. Plaintiffs' Counsels' Views

The PSC spoke with counsel for plaintiffs in each of the cases listed below. The PSC advised plaintiffs' counsel of the PSC's view that remand was appropriate, unless plaintiffs' counsel had different views.

Plaintiffs' counsels' views are summarized in the chart below.² This chart reflects, to the best of the PSC's knowledge, the universe of remaining clinic cases. Most plaintiffs' attorneys of record did not object to remand. Some counsel asked for more time to confer internally and/or with defense counsel.

	Case. No (D. Mass.)	Caption	Clinic Defendant	Status / Plaintiffs' Counsel
1	1:13-cv-13227	<i>Kennedy v. Unifirst</i>	Advanced Pain & Anesthesia Consultants, PC	<i>Conferring</i> Kimberly A. Dougherty Janet Jenner & Suggs
2	1:13-cv-13228	<i>Musselwhite v. Unifirst</i>	Advanced Pain & Anesthesia Consultants, PC	<i>Conferring</i> Kimberly A. Dougherty Janet Jenner & Suggs
3	1:14-cv-13676	<i>Musselwhite v. Advanced Pain & Anesthesia Consultants</i>	Advanced Pain & Anesthesia Consultants, PC	<i>Conferring</i> Kimberly A. Dougherty Janet Jenner & Suggs
4	1:14-cv-13689	<i>Kennedy v. Advanced Pain & Anesthesia Consultants</i>	Advanced Pain & Anesthesia Consultants, PC	<i>Conferring</i> Kimberly A. Dougherty Janet Jenner & Suggs
5	1:14-cv-10284	<i>Brady v. Cincinnati Pain Management Consultants</i>	Cincinnati Pain Management Consultants, Inc.	<i>Conferring</i> Kimberly A. Dougherty Janet Jenner & Suggs
6	1:14-cv-11224	<i>Pettit v. Cincinnati Pain Management Consultants</i>	Cincinnati Pain Management Consultants, Inc.	<i>Conferring</i> Kimberly A. Dougherty

² In a small number of instances, plaintiffs' counsel reported that the case either had been, or should be, dismissed. Those cases are included in the chart of dismissed cases above.

				Janet Jenner & Suggs
7	1:14-cv-10432	<i>Witt v. Cincinnati Pain Management Consultants</i>	Cincinnati Pain Management Consultants, Inc.	<i>Requested more time</i> Janet G Abaray Calvin Tregre Lopez, Hodes, Restaino, Milman & Skikos
8	1:14-cv-11856	<i>Gibson v. Liberty Industries</i>	Cincinnati Pain Management Consultants, Inc.	<i>No objection to remand</i> Anne Andrews John Thornton Andrews & Thornton
9	1:14-cv-13739	<i>Hosea v. UniFirst</i>	OSMC Outpatient Surgery Center	<i>No objection to remand</i> Edward B. Mulligan , V Gregory L Laker Cohen & Malad, LLP
10	1:14-cv-14669	<i>Hancock v. UniFirst</i>	OSMC Outpatient Surgery Center	<i>No objection to remand</i> Edward B. Mulligan , V Gregory L Laker Cohen & Malad, LLP
11	1:14-cv-13708	<i>Patel v. OSMC</i>	OSMC Outpatient Surgery Center	<i>No objection to remand</i> Anne Andrews John Thornton Andrews & Thornton
12	1:13-cv-12076	<i>Allen v. Ameridose</i>	Ambulatory Care Center	<i>No objection to remand</i> Edward B. Mulligan , V Gregory L Laker Cohen & Malad, LLP
13	1:14-cv-14668	<i>Griggs v. Unifirst</i>	Ambulatory Care Center	<i>No objection to remand</i> Edward B. Mulligan , V Gregory L Laker Cohen & Malad, LLP
14	1:14-cv-13027	<i>Moore v. Unifirst</i>	Ambulatory Care Center	<i>No objection to remand</i> Anne Andrews John Thornton Andrews & Thornton

15	1:13-cv-12657	<i>Montee v. BKC Pain Specialists</i>	BKC Pain Specialists, LLC	<i>Conferring</i> Kimberly A. Dougherty Janet Jenner & Suggs
16	1:13-cv-12659	<i>Cooper v. BKC Pain Specialists</i>	BKC Pain Specialists, LLC	<i>Conferring</i> Kimberly A. Dougherty Janet Jenner & Suggs
17	1:14-cv-12884	<i>Wynstock v. Ameridose</i>	Encino Outpatient Surgery Center	<i>Conferring</i> Kimberly A. Dougherty Janet Jenner & Suggs
18	1:13-cv-12015	<i>Younani v. NECC</i>	Encino Outpatient Surgery Center	<i>No objection to remand</i> Monica Blut Simon Resnik and Hayes
19	1:13-cv-10685	<i>Hanson v. NECC</i>	Ocean State Pain Management	<i>Conferring</i> Frank Prokos Law Office of Frank Prokos
20	1:13-cv-10943	<i>Simas v. NECC</i>	Ocean State Pain Management	<i>Conferring</i> Timothy P. Wickstrom Wickstrom Morse, LLP
21	1:14-cv-10362	<i>Eldreth v. Sunrise Hospital</i>	Sunrise Hospital and Medical	<i>No objection to remand</i> Anne Andrews John Thornton Andrews & Thornton
22	1:14-cv-10373	<i>Henley v. UniFirst</i>	Dallas Back Pain Management	<i>No objection to remand</i> James E. Girards Girards Law Firm
23	1:14-cv-12789	<i>Jeffries v. Ameridose</i>	Fullerton Orthopaedic Surgery Medical Group	<i>Conferring</i> Kimberly A. Dougherty Janet Jenner & Suggs
24	1:14-cv-12328	<i>Tashima v. NECC</i>	Sequoia Surgery Center	<i>No objection to remand</i> Neal Arthur Markowitz Thorsnes Bartolotta

				McGuire
25	1:15-cv-11367	<i>Gilliam v. Chowdhury</i>	Marion Pain Management	<i>No objection to remand</i> Kristen A. Johnson Hagens Berman Sobol Shapiro LLP
26	1:13-cv-13209	<i>Edwards v. Unifirst</i>	MAPS	<i>Conferring</i> Kimberly A. Dougherty Janet Jenner & Suggs
27	1:14-cv-13548	<i>Birge v. Unifirst</i>	Wellspring Pain Solutions Clinic	<i>No objection to remand</i> Edward B. Mulligan , V Gregory L Laker Cohen & Malad, LLP

The PSC will be prepared to discuss next steps with respect to these remaining clinic cases during today's 2:00 p.m. status conference.

Dated: May 19, 2016

Respectfully submitted,

/s/ Kristen A. Johnson

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Plaintiffs' Steering Committee

CERTIFICATE OF SERVICE

I, Kristen A. Johnson, hereby certify that I caused a copy of the foregoing to be filed electronically via the Court's electronic filing system. Those attorneys who are registered with the Court's electronic filing system may access these filings through the Court's system, and notice of these filings will be sent to these parties by operation of the Court's electronic filing system.

Dated: May 19, 2016

/s/ Kristen A. Johnson
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